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Honorable Judge Karen A. Overstreet

Hearing Location: Marysville, Hearing Date: January 12, 2010

Hearing Time: 9:00 am

Response Date: January 5, 2010

IN THE UNITED STATES BANKRUPTCY COURT WESTERN DISTRICT OF WASHINGTON

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CHAPTER 13 BANKRUPTCY

JOEL C SIMICICH AND CLARISSA A SIMICICH, NO.: 10-20176-KAO

MOTION FOR RELIEF FROM STAY BY JP MORGAN CHASE BANK, N.A., ITS SUCCESSORS IN INTEREST, **AGENTS AND ASSIGNS**

DEBTORS.

I. Introduction

COMES NOW, JP Morgan Chase Bank, N.A., its successors in interest, agents, assigns and assignors ("Creditor") and moves this court for an order terminating the automatic stay, allowing Creditor to proceed with and complete any and all contractual and statutory remedies incident to its security interests held in real property commonly described as 13722 W Vernon Ave, Goodyear, AZ 85338 ("Property"), and legally described as set forth in the Deed of Trust attached as an Exhibit to the declaration on file with the court. Creditor further seeks relief in order to, at its option, offer, provide and enter into any potential forbearance agreement, loan modification, refinance agreement or other loan workout/loss mitigation agreement and to contact the Debtor via telephone or written correspondence to offer such an agreement, which shall be non-recourse unless included in a reaffirmation agreement. Creditor further moves that, absent objection, the provisions of F.R.B.P. 4001(a)(3) be waived to avoid further deterioration of Creditor's secured position.

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II. Jurisdiction

This court has jurisdiction over this proceeding pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157(b)(2)(G). This case relates to a case under Title 11 of the United States Code. This proceeding is defined as a "core proceeding" as that is defined in the Code.

III. Standing

Under 11 U.S.C. § 362, a party seeking relief from stay must be a "party in interest." To establish that Creditor is a "party in interest", a creditor must establish that it has at least a colorable claim to the property that is the subject of the motion. In the case at bar, Creditor's claim is based on the Note and Deed. Creditor's interest in the Note and Deed is described below.

The Deed acts as the security for the Borrower's payment on the Note. The Deed is recorded with the county in which the property is situated as evidence of the debt described in the Note for the benefit of any subsequent parties that may take an interest in the property described.

The Note is a negotiable instrument as that term is defined by RCW § 62A.3-104. Under the terms of the Note, Borrower is obligated to pay the instrument according to its terms at the time it was issued. Creditor is entitled to enforce the note under R.C.W. § 62A.3-301.

Creditor, as the Original Lender and continuing holder of the Note has standing to seek relief from the automatic stay.

IV. Parties in Interest

On or about April 11, 2007, Joel Simicich, executed and delivered a note in favor of JP Morgan Chase Bank, N.A. with an original principal amount of \$252,000.00.

The indebtedness under the note is secured by a deed of trust recorded against the Property.

Joel C Simicich and Clarissa A Simicich ('Debtor' collectively hereafter) filed for protection under Chapter 13 of Title 11 of the United States Code on August 27, 2010.

V. Contractual Default

Debtor is in default pursuant to the terms of the note for failure to make the required payments. Payments are credited as last received to first due. Creditor's loan status reflects payments now owing due after November 1, 2009. The following is a breakdown of the default:

Date of Contractual Payments	Amount	Total
November 1, 2009 to November 1, 2010	\$1,802.93	\$23,438.09
Accrued Late Charges		\$477.84
Escrow Shortage		\$3,928.34
Total Default		\$27,844.27

These figures are an estimate only and are subject to change as additional fees are incurred and payments are made or become due, including but not limited to the attorney fees and costs incurred as a result of the filing of this motion. Please contact Creditor's counsel directly for a contractual reinstatement quote.

VI. Post-Petition Default

As of the date of this motion, the Debtor has accumulated the following post-petition defaults:

Total Post-Petition Default	\$5,408.79
Escrow Shortage	\$3,928.34
Accrued Post-Petition Payment Default	\$5,408.79
Post-Petition Payment Amount	\$1,802.93
Post-Petition Payment Due Date	September 1, 2010

These figures are an estimate only and are subject to change as additional fees are incurred and payments are made or become due, including but not limited to the attorney fees and costs incurred as a result of the filing of this motion. Please contact Creditor's counsel directly for a post-petition reinstatement quote.

Motion For Relief From Stay

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VII. Estimate of Obligation

The approximate amount owed under the terms of the note is \$266,842.36. The following is an itemization of this approximate amount:

Principal Balance	\$244,497.44
Accrued Interest	\$17,938.74
Accrued Late Charges	\$477.84
Escrow Shortages	\$3,928.34

Total Due \$266,842.36

This total is an approximation of the lien. This estimate is provided only for the purposes of this motion and cannot be relied upon for any other purpose, including tender of payoff. An exact, itemized payoff figure will be obtained from Creditor upon written request to counsel for the Creditor.

Other liens encumbering the Property include a scheduled debt in favor of National City with an approximate balance owed of \$35,000.00.

VIII. Value of the Property

Debtor's sworn schedules value the Property at \$127,400.00.

IX. Authority

Under 11 U.S.C. § 362 (d)(1), on request of a party in interest, the Court shall terminate, annul, modify or condition the stay for cause, including the lack of adequate protection. Adequate protection is lacking in cases where there is an insufficient equity cushion in the subject property. *In re Mellor*, 734 F.2d 1396, 1401 (9th Cir. 1984). An equity cushion is the amount of value in property that exceeds the amount owed on the property such that a secured creditor will not be subject to a loss in the event of a decrease in value while the property is encumbered by the automatic stay. *Id.* at 1400 n.2. In determining the amount of value in property, the likely costs of sale or liquidation must be considered. *In re Faires*, 34 Bankr. 549, 550 (Bankr. W.D. Wash. 1983). In the case at bar, considering the value of the Property,

1	Creditor's total lien, and the likely costs of liquidation, there is an insufficient equity cushion and		
2	thus Creditor lacks adequate protection.		
3	Under 11 U.S.C. § 362 (d)(1), on request of a party in interest, the Court shall terminate		
4	annul, modify or condition the stay for cause. Debtor's Chapter 13 plan provides that the		
5	Property will be surrendered. Therefore, cause exists to terminate or annul the automatic stay.		
6	X. Conclusion		
7	THEREFORE, Creditor requests this Court enter an order terminating the automatic stay		
8	pursuant to 11 U.S.C. § 362 and that Creditor be allowed to immediately proceed with and		
9	complete any and all contractual and statutory remedies incident to the security interests held in		
0	the Property.		
1	DATED this <u>18</u> day of <u>November</u> , 2010.		
2	ROUTH CRABTREE OLSEN, P.S.		
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4	Dry /o/ Mork Mohura WSD A #10462 for		
5	By: /s/ Mark Moburg WSBA#19463 for: James K. Miersma, WSBA# 22062		
6	Attorneys for Creditor		
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